

NO. 08-0961

IN THE SUPREME COURT OF TEXAS

MARIA DEL CARMEN GUILBOT SERROS DE GONZALEZ, INDIVIDUALLY
AND AS INDEPENDENT ADMINISTRATOR OF THE ESTATE OF MIGUEL
ANGEL LUIS GONZALEZ Y VALLEJO ET AL.,

Petitioners/Cross-Respondents,

vs.

MIGUEL ANGEL GONZALEZ GUILBOT ET AL.

Respondents/Cross-Petitioners.

**PETITIONERS/CROSS-RESPONDENTS' RESPONSE TO RESPONDENTS'
BRIEF ON THE MERITS**

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STATEMENT OF JURISDICTION

Petitioners/Cross-Respondents Maria del Carmen Guilbot Serros de Gonzalez et al. (“Plaintiffs”) object to the assertion by Respondents/Cross-Petitioners Miguel Angel Gonzalez Guilbot, Carlos A. Gonzalez Guilbot, and Maria Rosa del Arena de Gonzalez (“Defendants”)¹ that the court of appeals’ decision conflicts with this Court’s opinion in *Quaestor Investments, Inc. v. State of Chiapas*, 997 S.W.2d 226 (Tex. 1999) (per curiam).

As explained in Part I.B. below, *Quaestor* did not address the issue presented here: whether counsel’s hand-delivery of a remand order to state court—rather than the federal clerk’s mailing it—prevents jurisdiction from transferring from federal to state court after remand. Instead, the central issue in *Quaestor* was how to calculate the running of the six-month deadline for challenging a default judgment by writ of error where a defendant unsuccessfully attempts to remove the case to federal court after an adverse judgment. 997 S.W.3d at 228. Although the Court analyzed the timing of jurisdictional transfer from federal to state court and concluded “that jurisdiction reverts in the state court when the federal district court executes the remand order and mails a certified copy to the state court,” *id.* at 229, the Court’s analysis and conclusion did not consider circumstances like those present here, where the state court took no further

¹ According to the case-information page on the Court’s website, the Court has designated the “Estate of Miguel Angel Luis Gonzalez y Vallejo” as the Petitioner in this case and Miguel Angel Gonzalez Guilbot et al. as the Respondents. As explained on page viii of Petitioners/Cross-Petitioners’ Brief on the Merits, however, the proper Petitioners are Maria del Carmen Guilbot Serros de Gonzalez, individually and on behalf of the Estate of Gonzalez y Vallejo, and the other parties listed as Petitioners/Cross-Respondents on page i. To avoid confusion, the parties aligned with Maria del Carmen Guilbot Serros de Gonzalez will be referred to as “Plaintiffs,” and the parties aligned with Miguel Angel Gonzalez Guilbot will be referred to as “Defendants.”

action in the case until the remand order had been filed in state court after being hand-delivered to the state court clerk by a party.

For the reasons given in their merits brief, Plaintiffs agree that this Court does have jurisdiction over this case under TEX. GOV'T CODE ANN. §§ 22.001(a)(6) (Vernon 2004). *See* Petitioners/Cross-Respondents' Br. on the Merits at ix-x.

ISSUE PRESENTED

Whether, because Plaintiffs' counsel hand-delivered a certified copy of the remand order to probate court rather than waiting for the federal district clerk to mail it pursuant to 28 U.S.C. § 1447(c), federal law prevented the probate court from *ever* reacquiring jurisdiction over this case, even though: (i) Defendants concede that the federal court lost jurisdiction after the remand order was entered and transferred to probate court; (ii) Defendants reinitiated litigation in probate court by filing a recusal motion there immediately after the remand order was signed and entered; and (iii) the probate court took no action in the case until the remand order had been filed in state court.

INTRODUCTION AND SUMMARY

The relevant facts of this case are fully set forth in Plaintiffs' own merits brief, *see* Petitioners/Cross-Respondents' Br. on the Merits at 1-8; TEX. R. APP. P. 55.3(b), but can be summarized as follows. Less than one day after a federal district court judge granted Plaintiffs' motion to remand and the court's order was entered on the federal court's docket sheet, Defendants returned to probate court and filed their first of three recusal motions against any probate court judge assigned to preside over the case. *See* 27 CR 6447; 1st CR 7. Two-and-a-half hours later, Plaintiffs' counsel hand-delivered a certified copy of the remand order to the probate court clerk for filing. *See* 1st CR 7; 28 CR 6774. Three weeks after these events, at a hearing that Defendants did not attend but to which they instead sent a paralegal to observe, Judge Guy Herman denied all of Defendants' motions to recuse and assessed sanctions against Defendants. 1 RR 5-7, 13; 1st CR 71. That same day, after a trial likewise attended by Defendants' paralegal but not by Defendants, Judge Mike Wood rendered a final judgment for Plaintiffs. 1 (of 26) RR 22-23; 28 CR 6719-31.

Even though (i) Defendants concede that the federal court lost jurisdiction when the remand order was entered and transported to probate court, (ii) Defendants themselves reinitiated litigation in probate court, and (iii) the probate court took no action in the case until the remand order was filed, Defendants ask this Court to hold that the probate court never reacquired jurisdiction over this case—rendering the sanctions order and final judgment void—merely because the remand order was hand-delivered to probate court by Plaintiffs' counsel rather than mailed by the federal court clerk. *See* 28

U.S.C. § 1447(c) (“A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.”). Further, Defendants contend that due to Plaintiffs’ hand-filing of the remand order, *no* court can *ever* exercise jurisdiction over this case again.

This Court should decline to accept these incredible arguments. Neither *Quaestor Investments, Inc. v. State of Chiapas*, 997 S.W.2d 226 (Tex. 1999) (per curiam), *Spanair S.A. v. McDonnell Douglas Corp.*, 90 Cal. Rptr. 3d 864 (Cal. Ct. App. 2009), nor any of the conclusory policy arguments that Defendants advance supports their peculiar contention that Section 1447(c) makes the federal clerk’s mailing the remand order the *only possible way* that jurisdiction can be transferred from federal to state court after remand. Rather, the only two courts to have considered whether jurisdiction can be transferred by hand-filing have held that it can, and the recognized federal policies of preventing delay after remand and not wasting judicial resources support both Plaintiffs’ hand-filing the remand order and the court of appeals’ refusal to find the jurisdictional transfer incomplete on the facts of this case. Defendants’ nonsensical “limbo” theory, moreover, is so absurd that it hardly merits mention. Yet it, too, was flatly rejected in the only case on point. For these reasons and those given below, the court of appeals correctly rejected Defendants’ efforts to overturn the judgment against them on these grounds.

ARGUMENT

I. Section 1447(c) does not make “mail[ing]” the remand order a jurisdictional requirement.

Defendants claim that the probate court never regained jurisdiction from the federal district court because of 28 U.S.C. § 1447(c), which states that “[a] certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court,” and “[t]he State court may thereupon proceed with [the] case.” But nothing in the language of Section 1447(c) supports Defendants’ argument that the federal clerk’s “mail[ing]” the order to state court is the mandatory, exclusive method to transfer jurisdiction between courts. Indeed, every court to have squarely considered the issue has held otherwise.

A. At least two other state courts have held that hand-filing a remand order in state court is sufficient to transfer jurisdiction from federal to state court.

In *State ex rel. Village of Los Ranchos de Albuquerque v. City of Albuquerque*, 889 P.2d 204, 206 (N.M. Ct. App. 1993), for example, the “[p]laintiffs . . . filed the remand order with the state district court” shortly after it was entered, even though the federal court clerk did not mail the order until two years later. The New Mexico Court of Appeals rejected the plaintiff’s argument that all state court action taken in the two-year interval between the federal court clerk’s entering and mailing the remand order was void, citing the well-settled rule that “all doubts must be resolved in favor of remand” and reasoning that “[r]ecognizing the validity of the state court action prior to the state court’s official receipt of the federal remand order through the mail is particularly appropriate when a copy of the remand order [is] provided to the

state court by counsel.” *Id.* at 206-07; *see also Citizens Bank & Trust Co. v. Carr*, 583 So. 2d 864, 866 (La. Ct. App. 1991) (holding that “it was not error for the trial court to base its finding of reinstated jurisdiction on a true copy of the remand order *provided by counsel* instead of a remand order mailed by the federal court clerk” because while “§ 1447 provides that a certified copy of the order of remand shall be mailed by the federal court clerk, . . . this provision must be strictly construed against removal, with all doubts resolved in favor of remand” (emphasis added)).

In support of its holding in *City of Albuquerque*, the New Mexico court commented that it was “particularly unseemly for Plaintiffs to first have filed the remand order to induce the state district court to grant a temporary restraining order and then to attack the state court’s jurisdiction after the preliminary injunction [was] reversed on appeal.” *City of Albuquerque*, 889 P.2d at 207. Similarly, while Defendants did not file the remand order here, they were the ones to reinitiate litigation in the probate court by filing their first of three recusal motions there the very morning after the remand order was entered in federal court and provided by the clerk to Plaintiffs for filing. 27 CR 6447; 1st CR 7.²

² Defendants’ hyperbolic accusation that Plaintiffs have “unfairly and unjustly trie[d] to shift the blame for [their] violative actions onto Judge Rosenthal,” Defs.’ Br. on the Merits at 10, is without merit. The *only* explanation in the appellate record for Plaintiffs’ hand-delivery of the remand order is the following notation on the federal district court’s docket sheet: “[c]ertified copies of the docket sheet, memorandum on remand and order of remand provided to plaintiff’s counsel so that they can be expedited by hand delivery to Harris County no. 2.” 27 CR 6447. Thus, until Defendants attached the transcript of the remand hearing—which is not in the appellate record—to their reply in support of their petition for review, Plaintiffs’ appellate counsel reasonably assumed that Judge Rosenthal had either affirmatively given the remand order to counsel or at least acquiesced in the order’s being hand-delivered.

Defendants make much of this Court’s citation to *City of Albuquerque* in *Quaestor Investments, Inc. v. State of Chiapas*, 997 S.W.2d 226 (Tex. 1999) (per curiam), alleging that the Court “considered and flatly rejected” the case in arriving at *Quaestor*’s holding. Defs.’ Br. on the Merits at 22. Viewed in context, this Court appears to have misconstrued *City of Albuquerque* as making a broad and erroneous holding that a federal court’s entry of a remand order is *always* sufficient to transfer jurisdiction from federal to state court. *See Quaestor*, 997 S.W.2d at 228. But in fact, such a holding is neither expressed nor implied in *City of Albuquerque*. Moreover, as explained below, *Quaestor* is factually distinguishable from this case, so the Court’s disapproval of its apparent misreading of *City of Albuquerque* in that opinion is not conclusive in any event.

Faced with somewhat similar facts to ours, one Arizona court of appeals also eschewed the hypertechnical interpretation of Section 1447(c) that Defendants urge here. In *Health for Life Brands, Inc. v. Powley*, 57 P.3d 726, 727-28 (Ariz. Ct. App. 2002), the parties continued litigating the underlying dispute in superior court after a federal bankruptcy court granted the plaintiff’s motion to remand and the order was entered on the bankruptcy court’s docket sheet. Yet the bankruptcy clerk apparently never mailed the order. *Id.* at 730. The court of appeals held that, under these circumstances, “the superior court regained the power to proceed with the case upon entry of the remand order in bankruptcy court.” *Id.* at 730-31. The court reasoned that

[t]o hold that a state’s power to proceed commenced only upon the mailing of a copy of the remand order would arbitrarily give one side a second opportunity to argue its case based on a clerical error, would disregard principles of

comity, and would waste judicial resources. Such a conclusion would also exalt form over substance.

Id. at 731 (internal citations omitted). By contrast, the court explained, “[a] conclusion that the superior court regain[ed] the power to proceed upon entry of the remand order in federal court [would] prevent[] a case from floundering in some sort of legal limbo while awaiting the ministerial task of mailing a copy of the remand order” and avoid “[e]xcessive delay in the resolution of disputes,” thereby “further[ing] the intent of Congress that any doubts about the existence of removal jurisdiction in the federal courts . . . be resolved in favor of remand and state court jurisdiction.” *Id.*; *see also City of Orange County v. Lot 10*, No. 98-1389, 2002 WL 100674, at *2 (Iowa Ct. App. Jan. 28, 2002) (“We reject [the defendant’s] contention that the district court lacked jurisdiction when it acted prior to having received a *certified* copy of the remand order from the Federal District Court.” (emphasis in original)).

The reasoning of these courts is persuasive. In light of the unique circumstances of this case, the Court should hold that counsel’s hand-delivery of the remand order was sufficient to transfer jurisdiction from federal to state court.

B. Neither *Quaestor* nor *Spanair* supports Defendants’ jurisdictional theory.

Arrayed against the logic and authority of the court of appeals’ holding on this point, Defendants cling to the position that *Quaestor* provides that, regardless of the circumstances, a state court can only reacquire jurisdiction post-remand if and when the federal clerk *mails* a certified copy of the remand order. No reasonable reading of the decision will support such a rigid construction.

In *Quaestor*, this Court was presented with a single issue—how to calculate the time for appealing a default judgment by writ of error (restricted appeal) when the six-month period is interrupted by an unsuccessful attempt by the defendant to remove the case to federal court. *See Quaestor*, 997 S.W.2d at 228. Defendant State of Chiapas had removed a case to federal court five months and sixteen days after a state court signed a default judgment. *Id.* at 227. The federal district judge signed and mailed the remand order on December 28, 1995, and it was received by the state trial court on January 10, 1996. *Id.* at 228-29. Chiapas then pursued an unsuccessful appeal to the Fifth Circuit, which was dismissed for want of jurisdiction on August 16, 1996. *Id.* at 227. Chiapas finally filed a petition for writ of error on August 29, 1996. *Id.* On September 6, 1996, it mailed a copy of the remand order to the state district clerk. *Id.* at 228.

Quaestor moved to dismiss Chiapas's appeal as untimely, arguing that the appellate timetable recommenced either on December 28, 1995, when the federal district court entered the remand order, or on January 10, 1996, when the state court acknowledged receipt of it. *Id.* at 228. In response, Chiapas argued that the timetable recommenced either when the Fifth Circuit dismissed its appeal on August 16, 1996, or when Chiapas (not the federal court clerk) mailed a copy of the remand order to the state district clerk on September 6, 1996. *Id.* The court of appeals denied *Quaestor*'s motion to dismiss and held that the appellate timetable does not recommence until the party seeking remand acts affirmatively by giving notice to the other party. *Id.* at 227-28. It

later reversed the default judgment and remanded the case to the trial court. *Id.* at 227. Quaestor appealed the denial of its motion to dismiss, and this Court reversed. *Id.* at 229.

The Court first “disagree[d]” with the court of appeals “that [courts] must look any further than” the date of jurisdictional transfer “to determine when the timetable for filing a writ of error appeal beg[ins] to run again,” and then turned to examine the question of when “a jurisdictional transfer occurs between federal and state court.” *Id.* at 228. Initially, the court noted the absence of any “requirement that the state court take action (e.g., entering the order in the state court docket) to reassert jurisdiction,” thereby implying that the state court had regained jurisdiction—and Chiapas’s time for filing a writ of error petition had recommenced—earlier than January 10, 1996, when the state court acknowledged receipt of the remand order. *Id.* (citing *Mathewson v. Aloha Airlines, Inc.*, 919 P.2d 969, 985-86 (Haw. 1996)).

The Court then acknowledged a split in authority over whether jurisdiction transfers when the remand order is entered or mailed. *See id.* at 228-29. But even though, in the case before it, those actions had occurred on the same day—and Chiapas’s appeal was untimely regardless of whether jurisdiction transferred upon the entering, mailing, or receipt of the remand order, *see id.*—the Court nonetheless announced its agreement with “the majority rule” and held “that jurisdiction reverts in the state court when the federal district court executes the remand order and mails a certified copy to the state court.” *Id.* at 229. The Court cited with approval the reasoning of the Third Circuit in *Trans Penn Wax Corp. v. McCandless* that there must be “a determinable jurisdictional event after which the state court can exercise control over the case without further fear of

federal interference” and that, ordinarily, “the physical mailing of the certified copy” of the remand order is that event. 50 F.3d 217, 225 (3d Cir. 1995), cited in *Quaestor*, 997 S.W.2d at 229.

This passage from *Quaestor* cannot be stretched to support Defendants’ extreme jurisdictional theory for three related reasons. First, as the court of appeals recognized, “[t]hough *Quaestor* has language referring to mailing,” that case “did not address the issue we have here—an alternative method of delivery to the state court with full knowledge of all parties and unequivocal, immediate receipt by the state court.” *Gonzalez Guilbot v. Estate of Gonzalez y Vallejo*, 267 S.W.3d 556, 560 (Tex. App.—Houston [14th Dist.] 2008, pet. filed).³ Rather, the “only issue presented” to the *Quaestor* Court was “when the appellate timetable began to run again” after the case was remanded. *Quaestor*, 997 S.W.2d at 228.

Second, the Court’s jurisdictional-transfer analysis is technically dictum, since it was not necessary in order for the Court to decide whether Chiapas’s appeal was timely. *See id.* at 228 (noting *Quaestor*’s argument that the appellate timetable recommenced either when the remand order was entered on December 28, 1995 or when the state court received the order on January 10, 1996 and commenting that “[e]ither of *Quaestor*’s dates would make the appeal untimely”); *id.* at 229 (“The docket sheet indicates that the remand order was signed and mailed on December 28, 1995.”).

³ Regardless of whether the court of appeals should have relied on the law-of-the-case doctrine, the court properly recognized that “*Quaestor* did not address the issue we have here” and held that “the post-remand jurisdictional transfer to the state court was complete at all relevant times.” *Gonzalez Guilbot*, 267 S.W.3d at 560-61.

Third, nothing in *Quaestor* or *McCandless* suggests that, regardless of the circumstances, a remand order must be mailed in order for a remand to be effective, or that mailing is the only possible “determinable jurisdictional event.” *See id.* at 228-29; *McCandless*, 50 F.3d at 225 (noting the “general rule . . . that a district court loses jurisdiction” upon mailing and explaining the need for “a determinable jurisdictional event after which the state court can exercise control over the case without fear of further federal interference” (emphasis added)); *see also Health for Life Brands, Inc.*, 57 P.3d at 732 (distinguishing *McCandless* because it “did not involve the entry of a remand order followed by litigation of the case in state court without the federal court clerk’s office having sent a copy of the remand order to state court” and characterizing the court’s statements “regarding the significance of the mailing of the remand order” as “dictum”).

Thus, contrary to Defendants’ suggestion, *see* Defs.’ Br. on the Merits at 18, the Court need not overrule *Quaestor* in order to affirm the court of appeals’ judgment on this issue. The “determinable jurisdictional event” in this case was either the federal clerk’s giving the remand order to Plaintiffs’ counsel for hand-delivery to probate court on December 14, 2006, or the probate court’s filing of the order on the morning of December 15, 2006. Once the executed order was filed in the probate court, that court was free to “exercise control over the case without further fear of federal interference.” *McCandless*, 50 F.3d at 225.

Defendants also urge the Court to adopt the analysis of one California court of appeals in *Spanair S.A. v. McDonnell Douglas Corp.*, 90 Cal. Rptr. 3d 864 (Cal. Ct. App. 2009). But just like *Quaestor*, the critical factual distinctions between *Spanair* and

this case render that case useless support for Defendants' bright-line interpretation of Section 1447(c).

The underlying issues in *Spanair* were whether the plaintiffs' claims should be dismissed under a state statute providing for dismissal if a matter is not tried within three years of commencement, and how to calculate the three-year period when the federal district clerk neglects to mail the remand order for more than two years after it is entered. There, unlike here, only "minimal discovery" took place in state court in the period between the entering and mailing of the remand order, and the plaintiffs' attorney even informed the state court judge at an ex-parte hearing⁴ "that the case had been 'in limbo' for more than two years due to the district clerk's failure to send a certified copy of the remand order." *Id.* at 867. The defendants eventually moved to dismiss the plaintiffs' case under the state statutory provision, arguing that "the state court [had] reassumed jurisdiction over the action as soon as the remand order was entered by the district court . . . , and that dismissal was appropriate because plaintiffs had not exercised reasonable diligence in bringing their action to trial in the almost three years that had passed since the remand." *Id.* The plaintiffs, by contrast, argued that "jurisdiction is transferred only when the district court clerk mails a certified copy of the remand order to

⁴ Defendants' allegations of a conspiracy between Plaintiffs and Judge Wood are a sideshow that has no bearing on the legal issue of whether counsel's mere hand-delivery of the remand order to probate court forever deprived that court of jurisdiction over this case. The November 27, 2006 "ex-parte conversation" between Plaintiffs' trial counsel and Judge Wood that Defendants quote at length, *see* Defs.' Br. on the Merits at 2, 5-10, was a hearing that was properly noticed before Defendants' eleventh-hour removal. *See* 26 CR 6189. Even if the hearing should have been cancelled after removal, the fact that it was not and that certain dialogue occurred in open court and on the record makes no difference.

the state court clerk,” and that, therefore, the action was “suspended” for the three-year period between entering and mailing. *Id.*

The court agreed with the plaintiffs, reasoning that under “the plain language” of Section 1447(c), the state court “reacquire[s] [jurisdiction] when the district court clerk *gives notice to the state court clerk* in the form of a certified copy of the remand order.” *Id.* at 869 (emphasis added); *see also id.* at 871. Since “[p]laintiffs had no statutory obligation to expedite the remand,” the court determined that the trial court had erred in dismissing their case. *Id.* at 872. However, as in *Quaestor*, the court did not consider—because it had no occasion to—whether mailing is essential to the transfer of jurisdiction even when the state court clerk obtains a certified copy of the signed remand order some other way, such as by being physically transported to and filed in state court before litigation resumes there. *Spanair*, too, is therefore simply inapposite.

C. There is no policy reason to disallow the hand-filing of a remand order when appropriate to prevent further delay.

Unable to cite a single case to support its argument that the federal district clerk’s mailing the remand order is an absolute prerequisite to the transfer of jurisdiction after remand, Defendants urge that hand-delivery of the order by a litigant “creates an appearance of impropriety, lack of impartiality and prejudice to opposing litigant(s)” and “destroys any semblance of uniformity in the orderly process of jurisdictional transfer.” Defs.’ Br. on the Merits at 25. Not only do Defendants fail to explain why hand-delivery would have these effects, Texas Rule of Civil Procedure 237a expressly provides for it. *See* TEX. R. CIV. P. 237a (“When any cause is removed to the Federal Court and is

afterwards remanded to the state court, the plaintiff shall file a certified copy of the order of remand with the clerk of the state court and shall forthwith give written notice of such filing to the attorneys of record for all adverse parties.”). Moreover, where appropriate, hand-delivery actually furthers the intent of the removal statute, which is to “prevent delay in the trial of remanded cases by protracted litigation of jurisdictional issues.” *Thermtron Prods., Inc. v. Hermansdorfer*, 423 U.S. 336, 351 (1976); see also *Health for Life Brands, Inc.*, 57 P.3d at 731 (“To hold under these circumstances that the bankruptcy court retains jurisdiction and the superior court lacks the power to proceed would violate the principle that removal and remand procedures should not be construed to allow undue delay in the resolution of cases or to waste judicial resources.”); FED. R. CIV. P. 1 (instructing courts to “construe[] and administer[]” the federal rules “to secure the just, speedy, and inexpensive determination of every action and proceeding”); *Balestriere Lanza PLLC v. Silver Point Capital, LP*, No. 08 Civ. 4731, 2008 WL 2557424, at *2 (S.D.N.Y. June 26, 2008) (“Though [Rule 1] does not, strictly speaking, govern the interpretation of § 1447(c), it should be the touchstone not only of judicial action, but of the behavior of members of the bar as well.”).

The rule Defendants propose, by contrast, “would arbitrarily give one side a second opportunity to argue its case based on a clerical error, . . . disregard principles of comity, . . . waste judicial resources,” and “exalt form over substance.” *Health for Life Brands, Inc.*, 57 P.3d at 731.

II. Defendants’ absurd “limbo” theory only further discredits their interpretation of Section 1447(c).

Defendants’ argument that the post-remand transfer of jurisdiction from federal to state court turns on *how* the remand order is transmitted would be questionable enough if Defendants’ theory were that the federal court has retained jurisdiction over this case since the remand order was entered two-and-a-half years ago. But that is not their theory. Indeed, Defendants readily admit that the federal court lost jurisdiction at some point after the remand order was entered and suggest numerous precise times at which the jurisdictional divesting might have occurred. *See* Defs.’ Br. on the Merits at 15-17.

Instead, Defendants argue that because the remand order was hand-delivered to probate court rather than mailed, “neither the trial court nor the federal court has jurisdiction over this case, nor can either be re-vested with jurisdiction in the future.” *Id.* In other words, according to Defendants, counsel’s hand-delivery of the remand order has banished this case to a twilight zone between state and federal jurisdiction where it must writhe until time shall be no more, incapable of ever being acted on by a state or federal judge again.

Surprisingly, Defendants are not the first litigants to advance this patently absurd argument.⁵ In *Mathewson v. Aloha Airlines, Inc.*, 919 P.2d 969, 983-85 (Haw. 1996), the Hawaii Supreme Court rejected Aloha’s argument that the trial court lacked

⁵ Nor is this the only nonsensical argument that Defendants make. Defendants spend almost an entire page explaining the general principles of mootness but fail to explain how counsel’s hand-delivery of the remand order has rendered this case moot. *See* Defs.’ Br. on the Merits at 22-23.

jurisdiction to confirm an arbitration award rendered against Aloha because the remand order had not yet been officially filed in the state court record, even though the order had been entered and mailed by the federal court and received by the state trial court long before it entered the confirmation award. Addressing Aloha's contention that there was a jurisdictional gap between the federal court's being divested of jurisdiction upon mailing the remand order and the state court's reacquiring jurisdiction upon filing it, the court explained that

[t]o accept Aloha's construction of 28 U.S.C. § 1447(c) would lead to the absurd result that, despite the admitted fact that the federal district court had lost jurisdiction over [the case] by virtue of its remand order, *no court* had jurisdiction to adjudicate the action because it literally remained in a state of limbo until February 22, 1993 [when the order was filed in state court]. Consistent with [well-settled rules of statutory construction], we refuse to adopt such a view. Indeed, Aloha's position appears to be utterly without authoritative support and has, by clear implication, been universally rejected.

Id. at 986 (emphasis in original). The court thus held that the retransfer of jurisdiction from federal to state occurred simultaneously, which, in that case, was “*at the very latest . . . when the federal district court clerk mailed . . . the remand order.*” *Id.* at 985 (emphasis added).

This Court should follow the Hawaii court's lead and “refuse to adopt” Defendants' concept that cases drop into a judicial oubliette when statutory procedural directives are not followed to the letter. Defendants *concede* that the federal court lost jurisdiction at some point after the remand order was entered on the federal docket sheet and “intercepted” by Plaintiffs' counsel. Defs.' Br. on the Merits at 15. Defendants

themselves reinitiated litigation in probate court with full knowledge of the remand. And it is undisputed that the probate court did not take any action until after the remand order had been filed there. In view of these facts, to hold that the probate court lacked jurisdiction to proceed merely because the remand order was hand-delivered instead of mailed may be worthy of a Dickens novel, but not of modern American law. This case was properly remanded to the probate court.

PRAYER

For the reasons given here and in Plaintiffs' merits brief, the Court should grant both petitions for review, reverse the court of appeals' judgment with respect to its holding that Judge Herman's ruling on his own motion to recuse voided the sanctions order and final judgment, but affirm the court of appeals' judgment with respect to its holding that the post-remand jurisdictional transfer to probate court was complete at all relevant times.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on August 25, 2009, a true and correct copy of
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